



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

5/17/2010

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialis

SUBJECT: Crook County Plan Amendment
DLCD File Number 003-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, May 28, 2010

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged

Cc: Bill Zelenka, Crook County
Jon Jinings, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA

FORM 2

DLCD NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision
per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

DEPT OF

MAY 10 2010

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: CROOK Local File No.: AM-09-0165
(If no number, use none)

Date of Adoption: May 5th, 2010 Date Mailed: May 7, 2010
(Must be filed in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: October 8th, 2009

Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment
 Land Use Regulation Amendment Zoning Map Amendment
 New Land Use Regulation Other: _____
(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write ASee Attached.≡

261.31 Acre property rezoned from EFU-3 to R-10. The land use was changed to a non-resource designation.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write ASame.≡ If you did not give notice for the proposed amendment, write AN/A.≡

NA _____

Plan Map Changed from : EFU-3 _____ to R-10 _____

Zone Map Changed from: EFU-3 _____ to R-10 _____

Location: 16 15 (5) TL 500 (Parcel 2, Partition Plat 2006-51) Acres Involved: 261.31

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: 3,4

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 003-09 (17882) [16118]

Did the Department of Land Conservation and Development receive a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: X No: ___

If no, do the Statewide Planning Goals apply. Yes: ___ No: ___

If no, did The Emergency Circumstances Require immediate adoption. Yes: ___ No: ___

Affected State or Federal Agencies, Local Governments or Special Districts: _____

DLCD, Crook County Assessor _____

Local Contact: Bill Zelenka Area Code + Phone Number: 541-447-8156

Address: 300 NE Third St., Rm. 11 City: Prineville

Zip Code+4: 97754 Email Address: bill.zelenka@co.crook.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - **ATTENTION: PLAN AMENDMENT SPECIALIST.**

RECORDING COVER SHEET

Any errors in this cover sheet DO NOT affect the transactions(s) contained in the instrument itself.

STATE OF OREGON } SS 2010049
COUNTY OF CROOK }
I CERTIFY THAT THE WITHIN INSTRUMENT WAS
RECEIVED FOR RECORD ON THE 7th DAY OF
May, 2010, AT 1:55 P.M.
AND RECORDED IN CJRNL
RECORDS OF SAID COUNTY MF NO. 2010-049
DEANNA E. BERMAN, CROOK COUNTY CLERK
BY Julie Hammel DEPUTY *n/c*



AFTER RECORDING RETURN TO:

CLERK'S VAULT

NAME OF TRANSACTION

Ordinance 224 amending the Crook County comprehensive Plan from Resource to Non-Resource and amending the zoning map to rezone 261.31 acres from Exclusive Farm Use EFU-3 to Rural Residential R-10 and declaring an emergency

GRANTOR: CROOK COUNTY

IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CROOK

AN ORDINANCE OF THE CROOK
COUNTY COURT AMENDING THE
CROOK COUNTY COMPREHENSIVE
PLAN FROM RESOURCE TO NON-
RESOURCE AND AMENDING THE
ZONING MAP TO REZONE 261.31
ACRES FROM EXCLUSIVE FARM USE
EFU-3 TO RURAL RESIDENTIAL R-10
AND DECLARING AN EMERGENCY

Ordinance No. 224

WHEREAS, the Crook County Planning Commission has recommended that the Crook County Comprehensive Plan and Zoning Map be amended for the subject property from Resource to Non-Resource and that the subject property be rezoned from Exclusive Farm Use EFU-3 to Rural Residential R-10.

WHEREAS, the comprehensive plan amendment and zoning map amendment is authorized by Crook County Code Title 18 Chapter 18.168 and the Comprehensive Plan of Crook County;

NOW, THEREFORE, this 5th day of May 2010 the Crook County Court ordains as follows:

SECTION ONE. *Amendment.* Ordinance 18 is amended by changing the comprehensive plan designation and zoning map for

Parcel 2 (Two) Partition Plat 2006-51, Recorded October 2006 in Partition MF NO 2005-21599, Records of Crook County, Oregon Located in portion of Section 29 and 32, Township 15 South, Range 15 and Section 5 Township 16 South Range 15 East of the Willamette Meridian from Comprehensive Plan designation Resource to Non- Resource and the zoning from EFU-3 to R-10

SECTION TWO. *Findings.* The Crook County Court adopts the recommendation of the Crook County Planning Commission attached hereto as its findings in support of its Decision; with the exception that typographical errors contained in sub-component (g) – Accepted Farming Practices (p.9) and FINDING (p.10) are amended to read as follows: Change “predominantly Class 6 and 7 soils” To “predominantly Class 7 and 8 soils.”

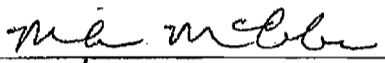
SECTION THREE. *Emergency*. The Ordinance being necessary for the health, welfare and safety of the people of Crook County, an emergency is hereby declared to exist and this Ordinance shall become effective upon signing.

First Reading 4-7-2010, 2010.

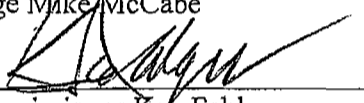
Second Reading 5-5, 2010.

Dated this 5 day of MAY, 2010.

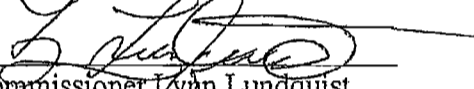
CROOK COUNTY COURT



Judge Mike McCabe

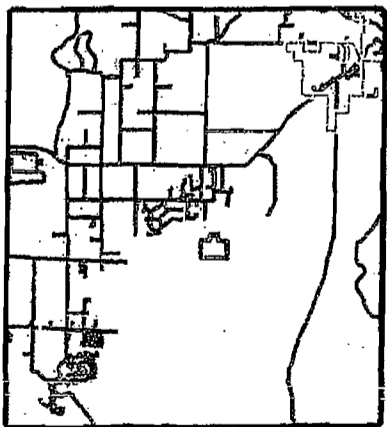
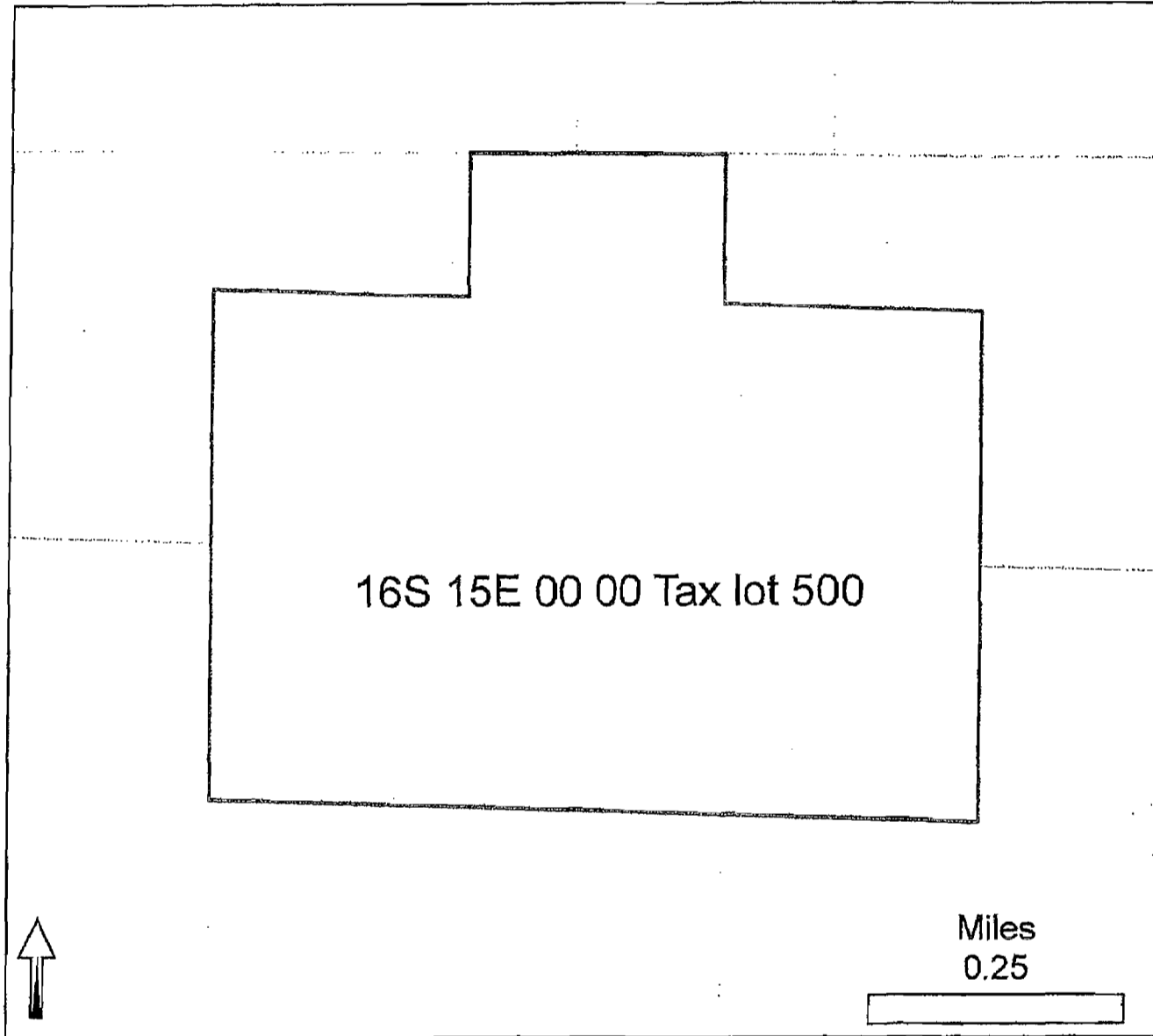


Commissioner Ken Fahlgren



Commissioner Lynn Lundquist

Ordinance No. 224 - AN ORDINANCE OF THE CROOK COUNTY COURT AMENDING THE CROOK COUNTY COMPREHENSIVE PLAN FROM RESOURCE TO NON-RESOURCE AND AMENDING THE ZONING MAP TO REZONE 261.31 ACRES FROM EXCLUSIVE FARM USE EFU-3 TO RURAL RESIDENTIAL R-10



CROOK COUNTY COURT

Judge Mike McCabe

Commissioner Ken Fahlgren

Commissioner Lynn Lundquist



Crook County
Planning Department
300 NE 3rd Street, Prineville, OR 97754
(541)447-8156 Fax (541)416-3905 ccplan@co.crook.or.us

BEFORE THE
CROOK COUNTY PLANNING COMMISSION

FINDINGS AND RECOMMENDATION TO THE CROOK COUNTY COURT

DATE: February 24, 2010

APPLICATION NO. AM-09-0163

APPLICANTS: Freund Spencer Investment Group LLC
63026 NE Lower Meadow Dr., Suite 200
Bend, OR 97701

ATTORNEY: Tia M. Lewis
Myles Conway
360 SW Bond St., Suite 400
Bend, OR 97702

LOCATION: The subject property is an approximately 261.31 acre parcel that is described as Parcel 2, Partition Plat 2006-51. The subject parcel is located on the north flank of Powell Butte south of the Red Cloud Ranch Subdivision.

ACREAGE: Approximately 261.31 acres

PROPOSAL: Recommendation to the Crook County Court regarding a request by Freund and Spencer, for approval of a Comprehensive Plan Amendment and Comprehensive Plan/Zoning Map Amendment from Resource/Exclusive Farm Use EFU-3 to Non-Resource/Rural Residential R-10. The amendment request contains approximately 261.31 acres.

APPLICATION DATE: October 6, 2009

DEEMED COMPLETE: November 6, 2009

150 DAY REVIEW PERIOD: April 5, 2010

PUBLIC NOTICE:

PROPERTY OWNER NOTICE: November 16, 2009

HEARING DATES: January 27, 2010 and February 10, 2010

1 - PLANNING COMMISSION RECOMMENDATION

AM-09-0163

PDX/113530/143001/TML/5662191.1

I. APPLICABLE CRITERIA:

- A. Crook County Code
Chapter 18.24, EFU-3 (Powell Butte Area)
Chapter 18.168, Amendments
- B. Crook County Comprehensive Plan
- C. Oregon Revised Statutes
ORS 215.203 et. seq.
- D. Oregon Administrative Rules
Chapter 660-015, Division 15, Statewide Planning Goals and Guidelines
Chapter 660-004-0005, Definitions
Chapter 660-012, Division 12, Transportation Planning Rule
Chapter 660-033, Division 33, Agricultural Land

II. FINDINGS OF FACT

1. SITE DESCRIPTION

The subject property is a 261.31 acre parcel located on the north flank of Powell Butte. The property is characterized by steep and varied topography. Vegetation on the site is primarily made up primarily of sage brush, bunch grass and juniper. The property is entirely undeveloped with no buildings or structures. The property is generally rectangular in shape. Elevation of the site ranges from 3975 feet to 4723 feet. The site contains slow-growing juniper on the southeast and northwest slopes with scattered areas of low-growing bunch grasses. The property has no water rights and shows no evidence of any past irrigation. The property contains numerous rock outcroppings and is made up primarily of volcanic rock referred to as rhyolite.

The property borders the large 3 Springs Ranch, owned by Ron Rasch, to the east. The 3 Springs Ranch is currently operated as a low intensity grazing operation. To the south, the property borders an approximately 3000 acre parcel that is also vacant and undeveloped. A portion of the adjacent property to the east is being utilized as a site for communication towers. The property borders publicly owned lands to the west. To the north and west, the subject property borders lands owned and managed by the State of Oregon. The state land is vacant and undeveloped. To the west and south, the subject property borders lands owned by the United States and managed by the BLM. The adjacent BLM land is also vacant and undeveloped. The BLM land is considered a part of what is called the "Red Cloud Grazing Allotment" (BLM Grazing Allotment Number 5092). The publicly owned lands to the north and west are also vacant and undeveloped, with no ongoing grazing or agricultural activities on site. The subject property borders another privately owned parcel to the north. This parcel (Parcel 1, Partition Plat 2006-51) is owned by the Wolf family and contains a single family dwelling.

The subject property is an approximately 261.31 acre parcel that is legally described as Parcel 2, Partition Plat 2006-51. The subject parcel is located on the northern flank of Powell Butte.

2 - PLANNING COMMISSION RECOMMENDATION

AM-09-0163

PDX/113530/143001/TML/5662191.1

2. ZONING

The existing zoning of the subject property is EFU-3 – Powell Butte Area (Crook County Code Section 18.24). The property also had a Destination Resort (DR) Overlay zoning under CCC 18.116, until the DR Map was repealed on October 7, 2009.

3. NON-RESOURCE DESIGNATION

The Applicant has requested a non-resource designation on the basis that the subject property does not meet the definition of agricultural land and therefore is not subject to the protection of Statewide Planning Goal 3. The process for a non-resource designation through the definitional route rather than through a goal exception is defined in State statute and administrative rule and further explained in case law from the Land Use Board of Appeals (LUBA). The proposal's compliance with the applicable criteria and standards set forth in the case law is set forth in the findings below.

III. CONCLUSIONARY FINDINGS

1. OAR 660-004-0005

Definitions:

For the purpose of this Division, the definitions in ORS 197.015 and the Statewide Planning Goals shall apply. In addition, the following definitions shall apply:

(1) An "Exception" is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with the provisions of this Division.

(2) "Resource Land" is land subject to the statewide Goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d).

(3) "Nonresource Land" is land not subject to the statewide Goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d).

(c) Goal 14 "Urbanization" except as provided for in paragraphs (l)(c)(A) and (B) of this rule, and OAR 660-014-0000 through 660-014-0040;

*be inventoried as agricultural lands even though
this land may not be cropped or grazed;*

Specifically, in response to each of the definitional criteria listed above, the following findings support the non-resource designation:

Criterion:

*(A) Lands classified by the U.S. Natural Resources
Conservation Service (NRCS) as predominantly
Class I-IV soils in Western Oregon and I-VI soils in
Eastern Oregon*

FINDING: The Applicant submitted detailed soils data and testimony prepared by Wert & Associates, Inc., as consulting soil scientist. The Soil Investigation Report was produced by Steve Wert who is a certified professional soil classifier and a certified professional soil scientist. Mr. Wert has been a consulting soil scientist in Oregon for over twenty years. The report is based on site specific data using the standards set forth by the USDA Soil Handbook #18. The soils report identifies actual soil types and land characteristics found on the subject property. The report indicates that the subject property contains 63 Class 7 or 8 soils and 36 Class 4-6 soils.

Mr. Wert testified extensively about his opinion of the site, the materials and standards used to conduct the soil survey and the results of his findings. He testified that the NRCS map incorrectly classified the soils on the subject property because it was based on general observations and assumptions, not on site specific data and, as a result, overestimated the amount of good soil in many areas on the subject property. We find Mr. Wert's report and testimony to be credible and based on accepted soil analysis methods. We find the site specific analysis to be more credible than the NRCS maps which are based on more general data. Based on the testimony and evidence in the record, we find the subject property is composed primarily of Class 7 and 8 soils, which are non-agricultural.

Criterion:

*(B) Land in other soil classes that is suitable for
farm use as defined in ORS 215.203(2)(a), taking
into consideration soil fertility; suitability for
grazing; climatic conditions; existing and future
availability of water for farm irrigation purposes;
existing land use patterns; technological and
energy inputs required; and accepted farming
practices; and*

FINDING: In previous decisions, the County has found that this criterion consists of separate sub-components that shall be "considered" and evaluated in order to determine the resource or agricultural capability of lands with soils that are Class 7 and above. No particular weight or scale is required to be applied to each component except that all are to be considered. The context of the various criteria is interpreted by the County to be a

tool for determining the suitability of a site for farm uses as defined in ORS 215.203 (2)(a).

a. Sub-Component – Soil Fertility

FINDING: The professional Soil Investigation Report prepared by Wert & Associates provides a detailed study of the soils on the subject property in accordance with industry-accepted methodology using standards from the USDA Soil Handbook #18. The Report provides credible evidence based on actual on-site investigation that the soils on the subject property are not fertile and cannot support the farm uses defined by statute above. As demonstrated by the aerial photos, on-site photos and on-site conditions, there is no evidence of any current or prior irrigation on the subject property.

b. Sub-Component – Suitability for Grazing

FINDING: The Soil Investigation Report establishes that the soils on the subject property are primarily Class 7 and 8 (63 %), which are not conducive to agriculture or crop production. The Report further documents the inability of the subject property to grow enough forage to support livestock grazing.

The property characteristics also show that the soils do not have the capability to provide adequate forage for cattle. The lack of any irrigation water, poor soils, sparse and non-nutritive vegetation and rocky terrain provide little opportunity for adequate forage for grazing purposes on the subject property. The photographic evidence and on-site conditions demonstrate the minimal amount of types of vegetation that do exist on the property and that it is not adequate for typical cattle grazing. The scarcity and species of on site vegetation available are additional limiting factors showing that the land is unsuitable for cattle grazing.

The applicant submitted testimony and evidence from a local rancher, Craig Woodward, who examined the subject property, its characteristics and location to conclude it was not suitable for grazing. Specifically, Mr. Woodward, who has owned and grazed livestock in Crook County for over 40 years, testified that the property is located in a closed range area, imposing liability on livestock owners for escaping livestock and therefore requiring livestock containment fencing. He testified that based on the location, lack of water, lack of adequate fencing, steep terrain and sparse vegetation, the property is not suitable for grazing. The rancher who currently runs cattle on the adjacent 3000 acre parcel to the south, Chad Penhollow, also testified that he would not use the subject property for grazing cattle due to its steep terrain, lack of water and lack of adequate forage. Another rancher who put cattle on the 3000 acres several years ago, Ron Miller, also submitted a letter that he would not use or lease the subject property for grazing because of its steep terrain, lack of water, lack of adequate access and fencing. Finally, the former owner of the property, who still owns the adjacent parent parcel to the north, submitted written testimony that he did not use the subject property for grazing or for any part of the dryland farming he conducts on the parent parcel.

c. Sub-Component – Climatic Conditions

FINDING: The County finds that the subject property is located in the Powell Butte area with climatic conditions typical in the Central Oregon High Desert Steppe. Climate in Central Oregon can widely vary. However, one of the most accurate methods for examining the effect of climate on the subject property is to examine the undisturbed primary species of vegetation growing upon it. The climate consistent with this area is semiarid with typical intermountain characteristics of dry hot summers, cold winters, and precipitation of 230 to 355 mm (9 to 14 in), which occurs principally as snow during the winter and as rain in the spring and fall.

The following chart shows the range of temperature and precipitation for the Prineville Area in the Central Oregon region.

Central Oregon Temperature and Precipitation Averages - 1971-2000
Oregon Climate Service

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Prineville												
High Temp	41.9	48.1	54.5	60.7	68.5	77.0	85.8	85.7	77.8	65.7	49.4	41.7
Low Temp	21.0	23.7	25.3	28.0	34.1	40.3	42.8	41.6	34.7	28.6	25.2	20.8
Precip	1.14	1.00	.95	.80	1.06	.84	.58	.45	.41	.76	1.30	1.20

Precipitation is generally sparse in the summer. Frost can occur during any month in Crook County; however, July and August are generally frost-free. Temperatures in central Oregon range from a record low of -32° C (-26° F) during January to a record high of 41° C (105° F) during August. The average temperature in January is -1° C (30° F) and in July, 18° C (64° F).

The climate that is most consistent for the property is arid, dry and consistent with the rainfall range described above. There is no evidence to support climatic changes would be improved on the subject property that would significantly improve the agricultural potential of the property.

The record shows that because of the extreme lack of irrigation water, no riparian habitat, no other large canopy tree species, and poor soils the land has significant challenges for improving the subject property for farm uses.

d. Sub-Component – Existing and Future Availability of Water for Farm Irrigation Purposes

FINDING: The photographic and historic evidence show that the subject property does not, and never has had any irrigation water on it. The Oregon Revised Statutes defines "irrigation" as follows:

"Irrigated" means watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. For the purposes of this division, an area or tract within a water or irrigation district that was once irrigated

shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.

Most Central Oregon irrigated farms receive irrigation water via canals owned and maintained by the Central Oregon Irrigation District (COID). The record shows that the subject property is not within the COID service area and is located over 1 ½ miles from the nearest ditch or canal.

As a result, the County finds that the subject property has never had established rights to any irrigation from any irrigation district. The record also shows that regardless of the COID boundary, the topographical constraints prohibit any effective delivery of water. The topographical constraints and the COID district boundary are significant limitations that preclude reasonable farm uses from occurring on the property and are, in addition to the poor soils, primary reasons for considering the property as non-resource.

1000 Friends submitted a letter arguing the property could be irrigated with ground water from an irrigation well. In response, the Applicant submitted testimony from the Watermaster that the subject property could not be irrigated with a groundwater permit because any permit would have to be mitigated and there are no mitigation credits available in the Crooked River zone of impact where the subject property is located.

Based on the evidence in the record, we find that the subject property currently has no irrigation water, has not had any in the past and there is none available in the foreseeable future.

e. Sub-Component – **Existing Land Use Patterns**

FINDING: The existing land use patterns in the area consist of a mixture of resort development, areas of low scale livestock grazing, small rural residential parcels and areas of limited agricultural production. Land at the top of Powell Butte had been zoned with Crook County's Destination Resort Overlay Zone, with a large resort approved for development to the south and west of the subject property. The DR map was recently repealed so the area no longer has the DR overlay. Former resort zoned lands also border the subject property directly to the south and east. As noted above, some livestock grazing activity occurs in the vicinity of the subject parcels. Numerous smaller rural residential parcels are located to the north of the subject property.

f. Sub-Component – **Technological and Energy Inputs Required**

FINDING: The soil limitations combined with the topography and lack of irrigation water, are significant barriers to accomplishing farm uses on the subject property. The evidence in the record shows any attempts to amend the soils in order to establish potential farm uses would be extremely expensive and of limited value without irrigation on hand to provide for acceptable soil moisture levels. Irrigation and water delivery, as noted above, is not feasible based on the lack of ground water, topographical constraints and the fact that the COID canal does not serve this area. The distance factor and limited water right availability are additional detriments to reasonable farm uses occurring on the subject property. The record also shows the cost to establish livestock containment

fencing on the subject property would not be cost effective given the terrain and lack of suitable forage for livestock.

g. Sub-Component – Accepted Farming Practices

The Oregon Revised Statutes provides guidance for understanding what the terminology of accepted farming practices means:

“Accepted farming practice” means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use

There is no evidence that the subject property has ever been farmed or grazed. The current owners have owned the property for over five years and have never used the property for farm use despite some owners conducting nearby or adjacent farm operations.

The closest agricultural operations to the subject property are located at the base of Powell Butte and have COID irrigation. Accepted farming practices in the area include irrigated fields for the production of alfalfa, grass hay and other seeded crops. Cattle production is also evident in the area where large expanses of irrigated pasture can be devoted to cattle forage. Without access to irrigated pastures, the farms would need to import a significant amount of supplemental hay and other feeds, a cost prohibitive option that is not practiced.

The accepted farming practices in the area are primarily for irrigated crop and irrigated pasture for cattle production. The subject property, devoid of irrigation, lacking riparian habitat, and predominantly Class 6 and 7 soils does not include the components necessary or customarily utilized in conjunction with nearby farm uses similar in nature to any nearby farm that is obtaining a profit in money. Several ranchers testified that they would not use the subject property for agricultural use and that any grazing or other agricultural activity would not be economically viable.

Criterion:

(C) Land That is Necessary to Permit Farm Practices to be Undertaken on Adjacent or Nearby Agricultural Lands

FINDING: The subject property has been owned by the present owners for over five years and during that time the land has never been grazed or put into any farm use related to crop or cattle production. The record owners have never been approached by any nearby farmer or rancher to use the subject property for farming or grazing uses. The evidence shows that the site does not contain suitable terrain, soils, forage or water to support the production of crops or cattle grazing – and therefore no need has ever existing for the subject property to be combined with any other adjacent or nearby agricultural land. In fact, the two ranchers who have used the adjacent property to the

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south for livestock grazing specifically testified they would not use the subject property due to the steep terrain, lack of adequate fencing, lack of water and limited forage. They also testified that agricultural or farm use of the subject property was not necessary to permit their grazing activities to occur on the parcel to the south and that rural residential use of the subject property would not impact their grazing operations.

Criterion:

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

FINDING: The Soils Investigation Report establishes that the subject property contains predominately Class 6 and 7 soils (63 %). In prior non-resource decisions, the County has found that the term "farm unit" requires a closer look and review to determine the application of the criterion. The County traditionally reviews LUBA decisions for guidance on this matter. *

The term "farm unit" is not defined in State statute or administrative rule but LUBA and Court of Appeals case law has held that the meaning pertains to lands that are managed or used together as a part of an agricultural operation, regardless of whether the lands are jointly owned or owned by separate, unrelated persons or entities. *Riggs v. Douglas County*, 167 Or App. 1, 8, 1 P 3d 1042 (2000); *Wetherall v. Douglas County*, LUBA No. 2008-071 (2008); *Wetherall v. Douglas County*, LUBA No. 2009-094 (2009). The central discussion in all of these cases is the joint use or management of the lands as a part of an agricultural operation.

In the present case, there is no evidence that the subject property has ever been a part of a farm unit. It has no history of agricultural use and is topographically distinct from the parent parcel. The evidence shows that the subject property is not now nor has it ever been managed as a part of the adjacent lands to the south. The evidence shows that prior to 2006, the subject property was a part of the 180 acre parcel adjacent to the north owned by Dennis Wolf. In 2006, the subject property was partitioned from the parent parcel and sold to the present owners to be used for access to a future destination resort. The owner of the parent parcel testified that he had not used the subject property for grazing or agricultural use due to its steep topography, lack of water and poor soils. Based on the evidence in the record, we find the subject property is not now and has not in the past been a part of a farm unit.

3. **Consistency with Comprehensive Plan Provisions.**

The following comprehensive plan provisions are not approval criteria but are relevant and will be considered and evaluated for consistency with the proposal.

The plan provisions are addressed for consistency with both the non-resource process and the goal exception process.

a. Page 27 CCCP

13. The need for a balancing of economic-environmental concerns in resource management and allocation decisions cannot be over-emphasized.

FINDING: The evidence establishes that the subject property does not meet the definition of agricultural land and therefore is not subject to Goal 3. The County has not identified any other resource value for the property. The subject site is not a part of a farm unit. The present proposal recognizes the need to balance a variety of competing issues and community needs. The proposal builds on the desire to provide a variety of housing environments to serve the rural population while including opportunities for protection of a vast amount of open space given the maximum density of 1 unit per 10 acres.

b. Page 29 CCCP

ECONOMIC POLICIES

1. To diversify, stabilize and improve the economy of the county.

2. To coordinate all planning programs and decisions concerning economical base resources in the county and to maintain an economic-environmental balance in all resource management and allocation decisions.

FINDING: The proposal will correct and provide a proper designation and zone for the subject property. The correction will help to enhance the economy by accommodating a housing type with open space and opportunities for rural recreational use. The R-10 designation and zone will provide a limited number of rural homesites in an area appropriate for the uses. The County can ensure a significant amount of open space for community recreational needs and right of way for public service needs will be preserved and/or dedicated through any future development process under the R-10 zone.

c. Page 40 CCCP

AGRICULTURE

1. Open lands used for agricultural and forestry purposes are an efficient means of conserving natural resources that constitute important physical, social, aesthetic, and economic assets to all of the people living in rural, suburban and urban areas of the county.

2. The preservation of a maximum amount of the limited supply of agricultural and forestry land is necessary to the conservation of the county's economic resource base, and

the preservation of such land in large blocks is necessary in maintaining the economy of the county and for the assurance of adequate, healthful, and nutritious food and forest products for the people of this county, state and nation.

FINDING: The record shows that the subject property is not agricultural and has never produced farm products that have benefited the local economy, nor will any farm production occur given the topographical constraints, soil types, lack of water and other factors described above. Thus, preservation of this parcel for farm uses would not enhance the economic resource base. However, the proposed R-10 zoning will recognize the character of the area, conserve open space and provide additional revenue to the community in the form of taxes and local purchases of commodities and services.

3. Expansion of urban and suburban development and non-farm rural residential and recreational subdivisions into the rural areas of the county outside the Urban Growth Boundary of the City of Prineville is a matter of public concern because of unnecessary increases in costs of public and community services including police, fire, education, transportation, health and welfare; conflicts between agricultural and non-agricultural activities; increasing costs and liabilities to agriculture; loss of open space, natural beauty and unrennewable resources; detrimental effects on wildlife habitats and migration patterns; increased fire hazards, limits to carrying capacities of air, water and land resources; and conflicts with the conservation of energy.

FINDING: The rural nature of the housing allowed under the R-10 zoning does not increase costs to the community or require subsidy. Water and sewer services will be private and supplied by the property owners. The proposed use will place little demand on public services including police, fire and transportation. The low impact of the proposal, combined with the open space opportunities to be required through the development application process will result in minimal conflict with the natural environment.

5. Recreational subdivisions with lots ranging from five (5) to twenty (20) acres have encompassed in excess of 18,000 acres since 1962 in the Post-Paulina area of the county alone, and for the entire county have consumed more than 28,000 acres. Such developments have generally only been successful and beneficial for the developer, leaving lot purchasers with little or no provisions for public utilities and services, access, domestic water, sewage or solid waste disposal, or employment opportunities. The term "recreational" attached to these developments is quite relative if not non-existent in fact. In most cases, the developments have destroyed existing recreational values, have taken lands out of historical rural productive capacities and have made a return to the former state impossible. The

semi-arid clay origin soils of the area are fragile and development destroys ground cover beyond repair, causes serious erosion hazards, changes patterns of wildlife, alters stream courses, and destroys aquifer recharge areas. The aesthetic values of the area are literally "raped" with forests of overhead utility poles, and substandard, dilapidated, abandoned structures. The encroachment of such developments affect agriculture practices and operations, hunting, fishing, and all the pleasures people take in open land. They preclude future cultivation, grazing, timbering, open space, wildlife habitats, ecological and economical balances, and energy conservation practices. Publicly, such developments are difficult and costly to service, and normally the local government cost-benefit ratio is a deficit.

FINDING: The proposal appropriately converts property with a resource designation to a non-resource designation. The property has not, and could not realistically support farm uses. While the above policy recognizes that the history of the area includes poor examples of recreational lot development, the County can impose open space requirements on the development process and can ensure the provision of adequate services for the low density rural housing allowed. Given that the subject property is adjacent to and surrounded by resort approvals, non-farm dwellings and smaller agricultural uses, the rural residential nature of the proposal is appropriate. The cost to the community is minimal given the low impact to the site and self-supporting nature of the development.

6. Goal No. 3 of the Statewide Planning Goals and Guidelines adopted by the State Land Conservation and Development Commission pursuant to ORS 197, requires that "Agricultural lands shall be preserved and maintained for agricultural products, forest and open space. These lands shall be inventoried and preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215. Such minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing agricultural enterprises within the area..... Agricultural Land. in Eastern Oregon is land of predominately class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use, taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices....." Although these referenced guidelines are substantial in scope and afford considerable protection for intensive cropland agricultural practices, such is determined not adequate to insure the desired and necessary preservation and protection of the large-scale range livestock

operation and base resources common and important to the county, and particularly to the Ochoco and Post-Paulina areas of the county. The full recognition is that the mere preservation of "all" irrigated and cultivatable lands in the area "will not" preserve the "total" agricultural economy. Neither will such minimize the detrimental effects on agriculture from increased property value assessments, land use conflicts, trespass, and numerous other problems derived from the mixing of non-compatible farm and non-farm uses in the Post-Paulina and Ochoco areas of the county. Therefore, realizing that present regulations realistically only afford protection to certain "Agricultural Lands" identifiable by the standard Soil Conservation Classification, it is imperative that agricultural lands preservation policies, for the Post-Paulina area primarily, include a range, and preservation goal.

FINDING: The previous findings demonstrate that the subject property is non-resource. The subject property is not near the Ochoco and Post-Paulina agricultural areas. The limited soil productivity as noted in the soils report and the other factual information presented previously show that the property is not suited for agricultural uses and does not meet the definition of agricultural land under Statewide Planning Goal 3.

7. As defined in the afore-referenced guidelines, "Agricultural Lands" involve a large part of the total county area, but only a relatively small portion, approximately 5% are classified as agricultural cropland of which only 60% are under irrigation, the remaining cropland being dry land farming. Agricultural cropland in the county is restricted generally by soil capabilities, a short growing season, and limited sources and supplies of water for irrigation. Despite these general limitations, however, agriculture is an important and substantial part of the county's total economy.

10. The provisions of ORS 215 also recognize and set forth certain non-farm uses which may be conditionally carried out with little or no conflict with area agricultural uses. Such uses may be established separately or in conjunction with farm use, are primarily commercially, industrially, or recreationally oriented, and in many cases may provide a means for secondary economic benefits to an agricultural enterprise. ORS 215.213.

12. To a semi-arid county like Crook County, water resources are a primary base factor and surface water resources the major supplier of needs. Agriculture and recreation are the two prime users in the county, both highly dependent upon quality and quantity.

Agriculturally, water is a necessary factor for intensive cash crops like potatoes, mint and alfalfa, and for the range-livestock sector. The production of winter forages is governed by available irrigation waters and managed summer grazing is dependent upon water availability and distribution. Further, whereas most of the cash crop areas can rely heavily on storage from the Ochoco and Prineville Reservoirs, the majority of the range-livestock sector, particularly the Post-Paulina and upper Ochoco areas, must rely on natural sources. Recreationally, surface water qualities and quantities are the basis for fishing and other outdoor activities. Relative hereto, it is recognized that problems of water quality and quantity are inseparable; problems of water pollution are not restricted to urban areas; and improved land use and resource planning and management are an essential ingredient to the maintenance and improvement of water quality and quantity. It is inevitable that demand will undoubtedly exceed the available supply, and that the competition among users will reach critical levels. Recognition of two possible courses of action is noted; develop additional sources or more efficiently utilize sources. There is an urgency to take steps which will ensure adequate supplies of high quality water for primary users at the least possible cost.

FINDING: The findings as previously discussed support a non-resource designation for the subject property. The subject property has never been farmed or grazed due to the topographical constraints, the lack of irrigation water, poor soils, and an unreasonably high cost of supplying the necessary components to amend these deficits.

d. Page 44 CCCP

OBJECTIVES

To maintain a viable agricultural base, preserve agricultural lands for agriculture, and to protect agriculture as a commercial enterprise. In order to maintain a viable agricultural economic base and develop and adopt realistic land development policies, it is necessary to recognize a distinction between rural development (which includes those area outside the Urban Growth Boundary of the City of Prineville) and urban and suburban development (which includes those areas lying within the adopted Urban Growth Boundary of the City of Prineville).

To conserve natural resources constituting important physical, social, aesthetic and economic assets through the development and adoption of realistic land use and development policies intended to achieve an economic-environmental balance, minimize public costs, and maximize energy conservation.

To minimize detrimental effects of land use and development relative to wildlife, natural hazards, public costs, resource carrying capacities, and livability. To minimize and actually prevent conflicts between farm and non-farm uses and resultant increased economical costs to the agricultural sector.

To provide maximum opportunity for optimum management and operational practices, and provide adequately efficient supportive resources and services.

To encourage development of rural lands in a proper and orderly manner as need necessitates only in the best public interest of the people of each planning area and the county as a whole with the preservation of as much agricultural land as possible, and with absolute "low" densities in the rural areas of the county.

To ensure that: (1) The goals, policies and proposals of the County's Comprehensive Plan be complied with; (2) The provisions of State Planning Goal No. 3 and other relevant goals are adhered to; and (3) The provisions of ORS Chapter 215 are implemented.

To achieve a balance between energy, environmental and economical considerations.

To encourage a proper balance between the needs for agriculture, residences and open space.

To develop and implement a realistic and comprehensive criteria for use and development of the rural areas of the county.

FINDING: The proposed non-resource designation for the property is appropriate and provides an opportunity to encourage development of rural lands in a proper manner. The proposal closely meets the intent of the Comprehensive Plan by providing a balance between the rural housing, recreation and open space needs of the community and the needs of the environment.

AGRICULTURAL POLICIES

It shall be the policy of Crook County, Oregon, to preserve agricultural lands, to protect agriculture as an economic enterprise, to balance economic and environmental considerations, to limit non-agricultural development, to maintain a "low" population density, and to maintain a high level of livability in the county.

It shall be the policy of Crook County to concentrate the major portion of the county's population growth within the Urban Growth Boundary (UGB) of the City of Prineville. Development outside the UGB will be permitted only where conflicts with productive agricultural areas are minimal and only when in compliance with the factors set forth in ORS 215.213 and the Comprehensive Plan. Subdivision developments in rural areas shall be directed to non-productive agricultural land and such conversion shall be based upon the factors set forth in Goal No. 3 of the Statewide Planning Goals and Guidelines, and other applicable policies, and developments with a Planned Unit Development concept and design are preferred over "standard" subdivision designs. The county, subject to proper zoning (exclusive farm use zoning) and in compliance with this policy, the county's Comprehensive Plan, State Planning Goal No. 3, and ORS Chapter 215, may permit subdivisions, land partitionings, and orderly development in rural areas on non-productive agricultural lands. In order to encourage flexibility and diversity in lot size and arrangement and the highest level of improvements and services, the county shall encourage a Planned Unit Development concept where it is demonstrated to be necessary, appropriate, in the best public interest, in balance with resource carrying capacities and in compliance with this policy and the overall Comprehensive Plan.

It shall further be the policy of the county that nonagricultural development in the rural areas shall be based, whenever possible, upon a demonstrated public need; and in all cases, such development shall avoid conflicts with the agricultural community. Therefore, the county shall not permit subdivisions on agriculturally productive lands; and in the case of such developments on non-agricultural lands in close proximity to said lands shall require setbacks, restrictions, and minimum lot sizes as deemed necessary to afford the greatest protection for said agricultural lands.

FINDING: The above agricultural objectives have limited applicability in this application, but the concepts for quality rural development remain important. Thus, the Applicant has proposed an R-10 designation and zone to limit density to rural levels and has the opportunity to utilize the PUD concept to provide significant open space and to cluster development and infrastructure in a centralized area. This planning technique is advocated by the CCCP and can be one way to help to demonstrate the design of the proposal is consistent with the objectives listed above.

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e. Page 55 CCCP

In order to afford maximum economical and regulatory incentives for agriculture, Exclusive Farm Use (EFU) Zoning pursuant to ORS Chapters 215.203 and 215.213 shall be applied to all agricultural areas of the county; such includes all of the county except those areas identified as the Ochoco and Prineville Reservoir areas and those areas constituting the three developed Rural Service Centers of Post, Paulina and Powell Butte (See page 75). Those areas associated with the two major reservoirs in the county cannot be considered agricultural because of the following factors: 1) Predominance of soil types with SCS Classification Ratings of VII and VIII relative to soil depth, slope, rock content and fertility; 2) Areas have not historically been agriculturally productive; 3) relationship to and reliance on major recreational resources relative to the Recreation Goal; 4) Unavailability of water for irrigation either from surface or ground water sources, present and future; and 5) Said areas are already 30 percent developed in recreational-residential uses. Those areas identified as Rural Service Centers are presently more than 90 percent developed, are limited to the existing platted areas, and are essential to the agricultural areas that each serves.

It shall further be the policy of the county to encourage private and public land exchanges where such is deemed to be in the best interest of resource management and development, and it shall be the policy of the county to encourage coordinated resource management development to achieve maximum efficient benefits under a multiple use concept.

FINDING: This proposal recognizes the non-resource value of the subject property and that it is not agricultural for the many reasons previously described above. Like other sites in the County determined to not be agricultural (as described in the objective above), the subject property has 1) predominance of soil types with classes of VII and VIII relative to soil depth, slope, rock content and fertility; 2) areas have not historically been agriculturally productive; 3) unavailability of water for irrigation either from surface or ground water sources, present and future; and 4) said areas are already surrounded by areas in non-resource uses.

Any ambiguity in the CCCP with regard to the ability to distinguish non-resource parcels from resource parcels such as the subject property is remedied by the findings contained in the record for this application. The examination process is unique for each site. Thus, no precedent is created by this application, as no other site would have the same unique features or location characteristics.

f. Page 55 CCCP

RECREATION

It is the goal of Crook County to satisfy the recreational

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needs of the citizens of Crook County and visitors by providing for human development and enrichment with recreation areas, facilities, and opportunities. These include, but are not limited to, open space and scenic landscapes; recreational lands; historical, archeology and natural science resources; scenic roads and travel ways; sports and cultural events; camping, picnicking and recreational lodging; tourist facilities and accommodations; trails; waterway use facilities; hunting; angling; winter sports; mineral resources; active and passive games and activities.

"Recreation needs" refers to existing and future needs by citizens and visitors for recreation areas, facilities and opportunities.

RECREATION POLICIES

1. Energy consequences shall be considered by all recreation plans to the extent that non-motorized types of recreational activities shall be preferred over motorized activities. Facilities directly serving the recreational needs of Prineville shall be built as close to the population center as possible in order to conserve energy of transportation to the site.

2. Planning for recreation facilities and opportunities shall also give priority to meeting the needs of the Prineville metro area and all Crook County citizens, persons of limited mobility, and handicapped individuals.

*3. Unique areas and potential recreation sites capable of meeting specific recreational needs shall be protected or acquired. In addition to fee acquisition, easements, cluster developments, preferential assessments, development rights acquisition, subdivision park land dedication, land leases and tax relief shall be considered as ways of protecting or acquiring these areas. See **NATURAL/SCENIC AND HISTORICAL** chapters for reference to specific areas in Crook County.*

5. The development of recreation facilities by private enterprise shall be encouraged and governmental recreation plans coordinated with private developments.

7. No recreational use shall be allowed to exceed the carrying capacity of the air, water and land resources of a recreational area. All recreational uses, including ORV uses specifically shall minimize environmental deterioration.

FINDING: The density limitation of one unit for every 10 acres provides incentive and opportunity to preserve significant open space and develop rural housing and recreational opportunities to serve the community.

g. Page 99 CCCP

NATURAL/SCENIC/BUFFER AREAS

It is the goal of Crook County to ensure continuity of the open space character that has always existed in Crook County, to promote landscape buffers within the man-made environment that are in harmony with the natural landscape and which will aid in reducing major impacts such as air pollution, making a healthier environment and enhancing the value of neighboring property; and to protect the following natural resources for the use and enjoyment of future generations:

- 1. Mineral and aggregate resources*
- 2. Energy sources*
- 3. Fish and wildlife habitats*
- 4. Ecologically and scientifically significant natural areas, including desert areas*
- 5. Outstanding scenic views and sites*
- 6. Water areas, wetlands, watersheds, and groundwater resources*
- 7. Wilderness areas*
- 8. Historic areas, sites, structures and objects*
- 9. Cultural areas*
- 10. Potential and approved Oregon recreation trails*
- 11. Potential and approved Federal wild and scenic waterways and state scenic waterways*
- 12. Potential park and recreation sites*

Natural Area - Includes land and water that has substantially retained its natural character and is important as habitats for plant, animal, or marine life. These areas are reserved for scientific research and educational value.

Open Space - Consists of lands used for agricultural or forest uses, and any land area, which if protected, would conserve the above natural/scenic resources.

FINDING: The non-resource designation of the subject property and any future development review under the R-10 zoning, including any proposed subdivision or PUD application, will also include the ability to limit the location and operating characteristics of the rural residential uses. As a result, the subject property can retain any natural scenic areas.

h. Page 161 CCCP

SOIL CAPABILITY CLASSES

The Soil Conservation Service has developed the following description of soil capability class:

"The capability classification is a grouping that shows, in a general way, how suitable soils are for most kinds of farming. It is a practical grouping based on limitations of the soils, the risk of damage when they are used, and the way they respond to treatment" (Page 11, Prineville Area Soil Survey). The S.C.S. has defined eight capability classes which are generally described as follows (Pg. 11 & 12, Prineville Area Soil Survey):

"Class I : Soils that have few limitations that restrict their use. No soils in the Prineville Area are in this class.

Class II : Soils that have some limitations that reduce the choice of plants or require moderate conservation practices...

Class III : Soils that have severe limitations that reduce the choice of plants, or require special conservation practices, or both...

Class IV : Soils that have very severe limitations that restrict the choice of plants, require very special management, or both...

Class V : Soils that are subject to little or no erosion but have other limitations, impractical to remove, that limit their use largely to pasture, range, woodland, or wildlife...

Class VI : Soils with severe limitations that make them generally unsuitable for cultivation and that limit their use largely to pasture or range, woodland, or wildlife and cover...

Class VII : Soils with very severe limitations that make them unsuitable for cultivation without major reclamation and that restrict their use largely to range, woodland, or wildlife...

Class VIII : Soils and land forms that have limitations that preclude their use for commercial plant production and restrict their use to recreation, wildlife, water supply, mining, or aesthetic purposes..."

Soils that are of S.C.S. class I- IV are usually deep, well drained and on the gentle slopes of the floodplains and terraces of the Crooked River and its major tributaries. These lands are productive for irrigated crops.

Those soils of S.C.S. classes V-VIII are generally shallow,

have drainage problems, and commonly occur in steep and rocky areas. These lands are limited in use to pasture, range, woodland, wildlife habitat, watershed, and recreation areas. For detailed descriptions of soils, see individual soil survey reports. The soil maps show those areas in the county which have the best soils for agriculture (generally class A - S.C.S. classes I-IV). When correlated with existing land use and other factors, the information can help direct growth relative to the preservation of agricultural lands.

S.C.S. capability classes can also be used to determine the location of pasture and grazing lands. Soil surveys have not been conducted to the level of accuracy necessary to determine soil capabilities within small individual tax lots except for that area covered by the Prineville Area Soil Survey. The General Soils Map for the County does not separate either individual soil types or classifications, nor, due to its general nature, does it distinguish good rangeland areas. The Septic Tank Suitability Maps and the Detailed Soils Maps were extrapolated from soil interpretations; other information which could be extrapolated includes number of acres covered by each soil, percentage of land covered by each soil, depth of soils, parent material, landform descriptions, etc. The soil information and maps have been compiled using photo interpretation and information found in the Prineville Area Soil Survey, the Trout Creek Area Soil Survey and the Bear Creek Soil Survey.

FINDING: The subject property soils are primarily Class 7 and 8 consistent with the data provided in the soils report. The report states that based upon his expert opinion, Mr. Wert finds the subject property unsuitable for agriculture given the topographical constraints, poor soils and lack of water. Grazing of the property is found to be unrealistic given that the property geographically inaccessible, has never been farmed or grazed and never sought by any nearby farm for farming or grazing purposes of any kind. The limited attributes of the parcel and the presence of the surrounding non-resource uses further preclude farming and grazing potential.

4. Compliance with OAR 660, Division 12, Transportation Planning Rule.

a. OAR 660-012-060, Plan and Land Use Regulation Amendments.

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation

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amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - (b) Change standards implementing a functional classification system; or
 - (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- (2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:
- (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
 - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

- (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
- (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
- (e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;
- (b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;
- (c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

- (d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and
- (e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.

(4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

FINDING: The Transportation Planning Rule ("TPR") applies to this application because it involves an amendment to an acknowledged plan. The proposed plan amendment would change the designation of the subject property from Agriculture to Residential and the zoning from EFU-3, to R-10.

The TPR, OAR 660-012-0060, is triggered when uses allowed under a plan amendment/zone change would "significantly affect" a transportation facility by generating more traffic than what would be generated by those uses allowed under the current zoning. To properly compare the trips, the trips generated by the most traffic intensive uses under the proposed zoning. *Mason v. City of Corvallis*, 49 Or LUBA 199 (2005); *Griffiths v. City of Corvallis*, 50 Or LUBA 588 (2005). Where the most traffic intensive uses allowed under the proposed zoning would generate an equal or lesser amount of trips than those allowed under the existing zoning, the proposed amendment would not significantly affect a transportation facility. *Mason*, 49 Or LUBA at 222; *Griffiths*, 50 Or LUBA at 593. In other words, the initial question under the TPR is whether the amendment causes a net increase in trips by comparing uses allowed under the existing zoning to those allowed under the proposed zoning. If the answer to that question is no, as here, the amendment does not "significantly affect" a transportation facility. *Griffiths*, at 593.

Under the proposed zone change to R-10, the Applicant could construct 26 single-family homes on the 261 acres. The Applicant submitted evidence demonstrating that under the existing EFU-3 zoning, the Applicant could develop a number of uses which could create greater traffic than the maximum traffic which could be generated by 26 homes. For example, in an EFU-3 zone, the Applicant could develop public and private schools, churches, horse breeding/boarding/training facilities, public and private parks,

community centers, hunting and fishing preserves, campgrounds, golf courses and commercial nursery facilities. Based on the trip generation table from the 8th Edition of the Institute of Transportation Engineer's Manual (ITE), many of the uses allowed in the EFU-3 zone, either individually or in combination (which could be allowed conditionally or through a partition), could generate trips in excess of those under the proposed zoning. Therefore, we find that the proposal will not significantly affect a transportation facility and is thereby consistent with the TPR as defined by OAR 660-012-0060.

1. Goal 1 -- Statewide Planning Goals.

FINDING: Statewide Planning Goal 1 provides "the opportunity for citizens to be involved in all phases of the planning process." This goal requires a governing body responsible for adopting a comprehensive plan to adopt and publicize a program for citizen involvement that clearly identifies the procedures by which the general public will be involved in the on-going land use process. The County's land use process for the present plan map amendment and zone change provides two public hearings before the planning commission and at least two public hearings before the County Court. Thus, there is ample opportunity for citizen involvement and the local ordinances detail the procedures necessary to become involved and notified of decisions.

2. Goal 2 -- Land Use Planning.

FINDING: Statewide Planning Goal 2 requires that the County establish a planning process and policy framework that will serve as a basis for all decisions and actions related to the use of land. It requires that the County assure an adequate factual base for its decisions and actions. The County has detailed procedures and ordinances governing the present plan map amendment and zone change. The County issues written decisions on all applications such as the present one with findings supported by substantial evidence as the basis for the decision.

3. Goal 3 -- Agricultural Lands.

FINDING: Statewide Planning Goal 3 defines agricultural lands in Eastern Oregon as lands with predominantly SCS Class I-VI soils, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy requirements, and accepted farming practices. Lands in other classes, which are necessary to permit farm practices to be undertaken on adjacent or nearby lands shall be included as agricultural land in any event. More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal. The present application establishes the soil classification for the subject property as predominantly Class 7 and 8 thereby making the soils non-agricultural. The record demonstrates the subject property is not suitable for grazing or for use in conjunction with other farming operations on agricultural lands. The subject property does not meet the definition of agricultural land and is therefore not suitable for protection by Goal 3.

4. Goal 4 -- Forest Lands.

FINDING: Statewide Planning Goal 4 defines Forest Lands as lands acknowledged as such as of the date of adoption of the goal. Goal 4 is not applicable because there are no such lands impacted by this proposal.

5. Goal 5 – Open Spaces, Scenic and Historic Areas and Natural Resources.

FINDING: Statewide Goal 5 is applicable because there is no scenic, open space or historic resources identified on the subject property. However, the density of one unit per 10 acres provides significant opportunity for the protection of open space.

6. Goal 6 – Air, Water and Land Resources Quality.

FINDING: Statewide Planning Goal 6 requires local governments to have comprehensive plans and ordinances consistent with state and federal regulations protecting air, water and land resources. The approval of the requested zone change and plan amendments will not prevent the County from achieving compliance with environmental regulations.

7. Goal 7 – Natural Resources and Hazards.

FINDING: Statewide Planning Goal 7 is not applicable, as there is no indication of any natural resources or hazards on the property or in the vicinity of the property.

8. Goal 8 – Recreational Needs.

FINDING: Statewide Planning Goal 8 directs local governments to evaluate recreational needs within the community and provide provisions in the comprehensive plan to deal with the recreational demand. This Goal also provides provisions for citing destination resorts. This property is not designated for use as a park or other recreational facility to meet the demand for recreational needs in the County. The subject property contains a Destination Resort Overlay zoning designation under CCC Chapter 18.116. While rural residential development at a density of 1 unit per 10 acres will likely provide opportunities for significant open space and recreation, there is no likelihood of a negative impact on recreation. The proposal will not impact the destination resort overlay zoning.

9. Goal 9 – Economic Development.

FINDING: Statewide Planning Goal 9 requires a local government to inventory areas suitable to serve industrial and commercial development and include such inventories in the County's Comprehensive Plan. This property is not zoned or designated for commercial or industrial development. The present proposal will have little impact on the economic development planning in the County.

10. Goal 10 – Housing.

FINDING: Statewide Planning Goal 10 is not applicable because the proposal will result in a negligible addition to Crook County's housing stock.

11. Goal 11 – Public Facilities and Services.

FINDING: Statewide Planning Goal 11 is concerned with orderly and efficient provisions of public services. This goal is applicable, as the proposal will require some new public facilities and services, but the rural nature and low density of the proposed development will not necessitate a public facilities plan. The rural residential development allowed by the proposal will require the provision of domestic water, sewage disposal, and roads. Electrical power is presently available to the property.

12. Goal 12 – Transportation.

FINDING: Statewide Planning Goal 12 is applicable, as the proposal involves an amendment to an acknowledged Comprehensive Plan. The evidence submitted in the present Burden of Proof Statement demonstrates compliance with the Transportation Planning Rule as the uses allowed under the existing zoning could generate more trips than those uses allowed by the proposed zoning on the subject property.

13. Goal 13 – Energy Conservation.

FINDING: Statewide Planning Goal 13 requires that land and uses developed on the land be managed to maximize the conservation of all forms of energy, based upon sound economic principles. The approval of the proposed plan and zone change will not affect compliance with Goal 13.

14. Goal 14 – Urbanization.

FINDING: Statewide Planning Goal 14 is not applicable to non-resource lands in accordance with OAR 660-004-0040(2)(c)(F).

15. Goal 15 – Willamette Greenway; Goal 16 – Estuarine Resources; Goal 17 – Coastal Shorelands; Goal 18 – Beaches and Dunes and Goal 19 – Ocean Resources.

FINDING: Statewide Planning Goals 15, 16, 17, 18 and 19 are not applicable as Crook County does not have any such areas or resources and no such areas or resources will be impacted by the proposal.

IV. COMMISSION RECOMMENDATION

Commissioner Stec moved that the Commission **recommend approval** of the application with a requirement/suggestion that any subdivision application utilize the PUD process to provide a clustering of homesites and infrastructure development and preserve open space. Commissioner Crafton seconded the Motion. The Commission voted 3-2 that the Commission recommend approval of the application with the above stipulation to the County Court. Commissioner Curths was absent, having resigned on January 31, 2010. Commissioners Bedortha and Weberg voted against the recommendation.

Dated this 24th day of February 2010.

W.R.C.

WR Gowen

Planning Commission Chairman

Heidi T.D. Bauer

Heidi T.D. Bauer

Assistant Planning Director

AFFIDAVIT OF MAILING

STATE OF OREGON)
) ss.
County of Crook)

I, Mary Lou Johnson, being first duly sworn, depose and say that I am the person responsible for depositing all Notices of Hearings that are required pursuant to Chapters 197 and 215 of the Oregon Revised Statutes to be mailed by Crook County;

That the mailed Notice of Public Hearing was deposited on the 24th day of March, 2010 in the United States Mail, proper postage affixed thereon, to the following persons, entities, addresses and on the dates below described:

Applicant: Freund Spencer Investment Group, LLC
63026 NE Lower Meadow Dr., Suite 200
Bend, OR 97701

Attorney: Tia M. Lewis
Myles Conway
360 SW Bond St., Suite 400
Bend, OR 97702

Application No.: AM-09-0163

Jurisdiction: Crook County, Oregon

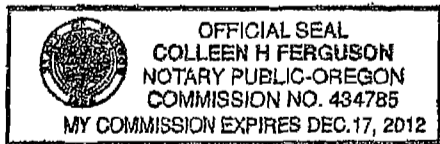
Person/Entity and Address:

Please see attached Exhibit "A" attached hereto and incorporated herein.

Mary Lou Johnson
Mary Lou Johnson

STATE OF OREGON)
) ss.
County of Crook)

SUBSCRIBED and SWORN to before me this 24th day of March, 2010.



Colleen H. Ferguson
Notary Public for Oregon
My Commission Expires: 12-17-2012
Comm. # 434785

FREUND/SPENCER INVESTMENT
GROU
63026 NE LOWER MEADOW DR STE
200
BEND, OR
97701

MCGUIRE RUSSEL L
10500 SW RED CLOUD RD
POWELL BUTTE, OR
97753

POWELL BUTTE VISTAS LLC
63026 NE LOWER MEADOW DR STE
200
BEND, OR
97701

RAASCH RONALD A
PO BOX 11
POWELL BUTTE, OR
97753

STATE OF OREGON DEPT OF STATE
775 SUMMER ST NE, STE 100
SALEM, OR
97301-1279

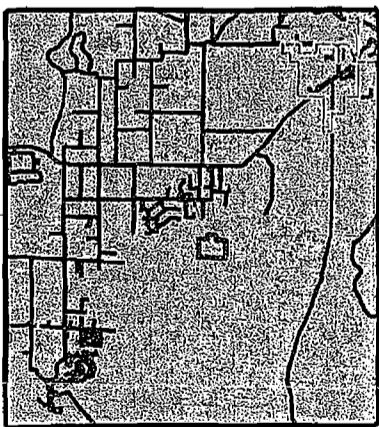
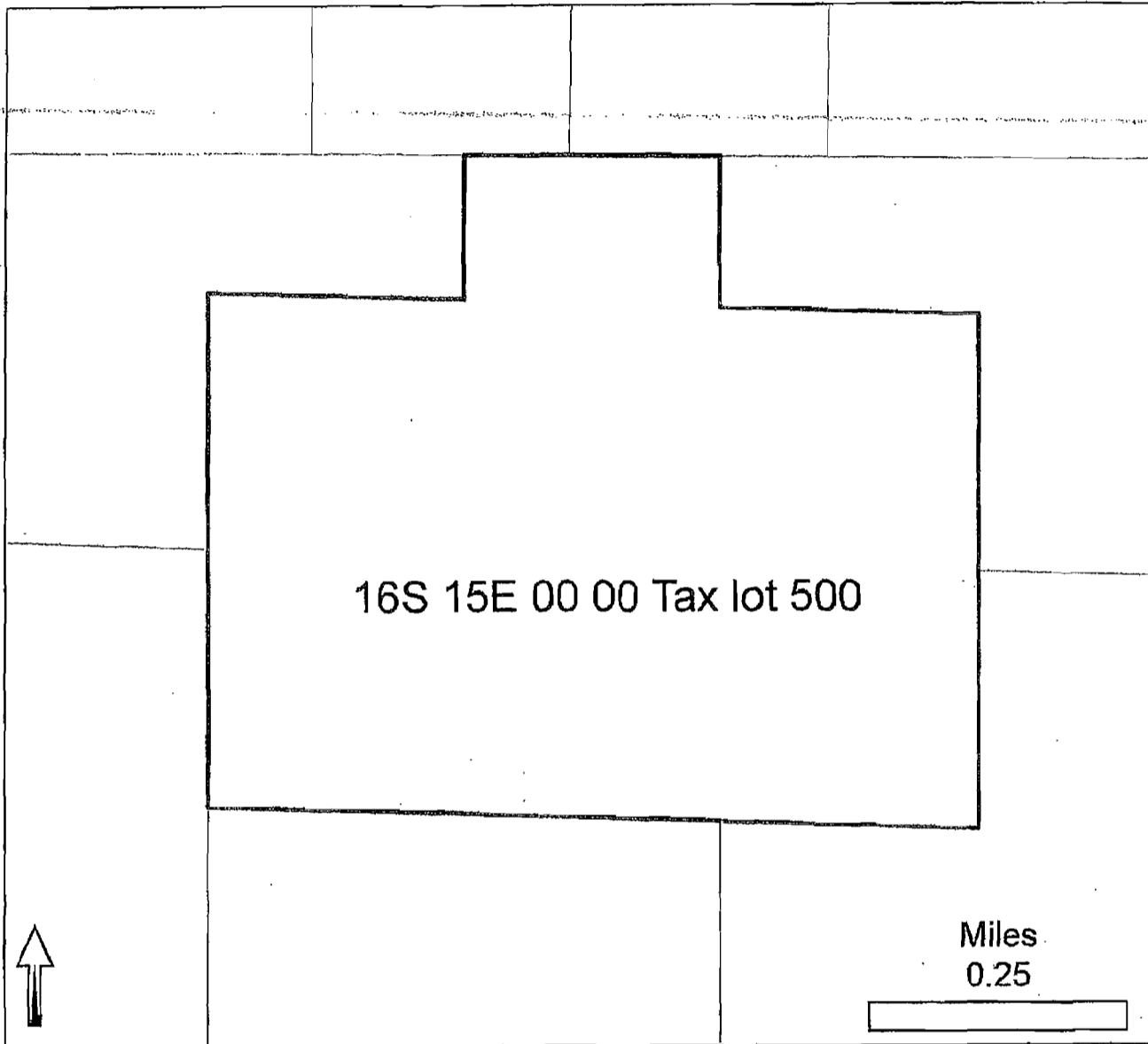
THREE SPRINGS RANCH CO
PO BOX 11
POWELL BUTTE, OR
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WOLF DENNIS T & VALERIE M
7700 SW STILLMAN RD
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97753

*Tia Lewis
myles Conway
360 SW Bond St. Ste 400
Bend, OR 97702*

EXHIBIT A

Ordinance No. 224 - AN ORDINANCE OF THE CROOK COUNTY COURT AMENDING THE CROOK COUNTY COMPREHENSIVE PLAN FROM RESOURCE TO NON-RESOURCE AND AMENDING THE ZONING MAP TO REZONE 261.31 ACRES FROM EXCLUSIVE FARM USE EFU-3 TO RURAL RESIDENTIAL R-10



CROOK COUNTY COURT

5-5-2010

Mike McCabe

Judge Mike McCabe

Ken Fahlgren

Commissioner Ken Fahlgren

Lynn Lundquist

Commissioner Lynn Lundquist

CROOK COUNTY PLANNING DEPT.
300 N. E. Third Street
Prineville, OR 97134

DLCD
Plan Amendment Spec.
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Salem OR 97301-2540



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